

## Attachment 1

Turner, Christina E.

---

From: Glennon, Edward  
To: [REDACTED]  
Subject: Wednesday, June 29, 2005 4:09 PM  
'Robertson, Christopher'  
RE: Maihos Depositions

Chris,

We would like to depose Eileen Barrett the same week we depose Bob Maihos and Donald Barrett. We would like to depose Eileen on July 19, Bob Maihos on July 20, and Donald Barrett on July 21, with the 22nd reserved for possible additional time for Donald Barrett. Please let me know if these dates work for you.

With regard to the depositions of the Triad defendants, we have asked Joe Ryan for dates for Allen Stern and Steven Ritchey for the week of July 11.

Thanks.

Ed

Edward Glennon  
Federal Trade Commission  
Division of Advertising Practices  
601 New Jersey Avenue, N.W.  
Mail Drop: NJ-3212  
Washington, D.C. 20580  
Phone: (202) 326-3126  
Facsimile: (202) 326-3259  
E-mail: [eglennon@ftc.gov](mailto:eglennon@ftc.gov)

Original Message-----

From: Robertson, Christopher [<mailto:crobertson@seyfarth.com>]  
Sent: Thursday, June 23, 2005 3:32 PM  
To: Glennon, Edward  
Subject: RE: Maihos Depositions

Ed:

Got your message and I assume it was to confirm depositions. The week of July 18, 2005 looks good. How would Wednesday 7/20 through Friday 7/22 work? Let me know and we can confirm.

Also, are any of the other depositions scheduled yet? We are not sure how we are going to cover them, so the sooner we know the dates, the better.

Thanks.

Chris

-----Original Message-----

From: Glennon, Edward [<mailto:eglennon@ftc.gov>]  
Sent: Wednesday, June 22, 2005 4:14 PM  
To: Robertson, Christopher  
Subject: Maihos Depositions

Chris,

We have not heard back from you with regard to the proposed dates of

June 28 and 29th for the Robert Maihos and Donald Barrett depositions, but we wanted to let you know that next week now does not work for us.

We would propose deposing Messrs. Maihos and Barrett the week of July 4.

The alternative, we could conduct the depositions the week of July 11. In accordance with our discussions, we would like to reserve three consecutive days for the depositions. We would depose Robert Maihos on the first day, depose Donald Barrett the next day, and reserve the third day for any needed continuation of Mr. Barrett's deposition (per our previous agreement to have additional deposition time for Mr. Barrett, if necessary).

Please let me know what dates would work for you.

Thanks.

Ed

Edward Glennon  
Federal Trade Commission  
Division of Advertising Practices  
601 New Jersey Avenue, N.W.  
Mail Drop: NJ-3212  
Washington, D.C. 20580  
Phone: (202) 326-3126  
Facsimile: (202) 326-3259  
E-mail: [eglennon@ftc.gov](mailto:eglennon@ftc.gov)

-----Original Message-----

From: Robertson, Christopher [<mailto:crobertson@seyfarth.com>]  
Sent: Monday, June 13, 2005 10:52 AM  
To: Glennon, Edward  
Brooks, Peter  
Subject: Depositions

Ed:

Are the depositions that were scheduled for this week going forward? Last we spoke, there had been no confirmation of these depositions. Could you please let me know. Thanks.

As to the proposed dates for Barrett and Maihos, I am hoping to get back to you later today to confirm.

Chris

The information contained in this transmission is attorney privileged and/or confidential information intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.

Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

The information contained in this transmission is attorney privileged and/or confidential information intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.

**Turner, Christina E.**

---

**From:** Glennon, Edward  
**Sent:** Friday, July 08, 2005 3:35 PM  
**To:** 'Robertson, Christopher'  
**Cc:** Brooks, Peter  
**Subject:** Deposition Scheduling

Chris,

Could you please let me know how things stand with regard to our request to depose Eileen Barrett the week of July 18? It is our understanding that we will depose Robert Maihos on July 20 and Donald Barrett July 21-22.

Thanks.

Ed Glennon

Edward Glennon  
Federal Trade Commission  
Division of Advertising Practices  
601 New Jersey Avenue, N.W.  
Mail Drop: NJ-3212  
Washington, D.C. 20580  
Phone: (202) 326-3126  
Facsimile: (202) 326-3259  
E-mail: [eglennon@ftc.gov](mailto:eglennon@ftc.gov)

Turner, Christina E.

---

From: Glennon, Edward  
Sent: Friday, July 08, 2005 5:21 PM  
To: Turner, Christina E.  
Subject: FW: Deposition Scheduling

-----Original Message-----

From: Robertson, Christopher [mailto:crobertson@seyfarth.com]  
Sent: Friday, July 08, 2005 5:13 PM  
To: Glennon, Edward  
Cc: Brooks, Peter  
Subject: RE: Deposition Scheduling

I apologize for not getting back sooner. I am on vacation all next week, but will be back on the 19th. Eileen just came home from the hospital today, after a late delivery, lengthy labor and c-section. She is okay, but tired. I would request that we push her back a bit to be home with the baby. I will check with her on proposed dates, however, and get back to you next week.

The other depositions are fine.

While I am away, please contact Peter Brooks if you have any questions or other issues.

-----Original Message-----

From: Glennon, Edward [mailto:eglennon@ftc.gov]  
Sent: Friday, July 08, 2005 3:35 PM  
To: Robertson, Christopher  
Cc: Brooks, Peter  
Subject: Deposition Scheduling

Chris,

Could you please let me know how things stand with regard to our request to depose Eileen Barrett the week of July 18? It is our understanding that we will depose Robert Maihos on July 20 and Donald Barrett July 21-22.

Thanks.

Ed Glennon

Edward Glennon  
Federal Trade Commission  
Division of Advertising Practices  
601 New Jersey Avenue, N.W.  
Mail Drop: NJ-3212  
Washington, D.C. 20580  
Phone: (202) 326-3126  
Facsimile: (202) 326-3259  
Email: eglennon@ftc.gov

Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing

legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

The information contained in this transmission is attorney privileged and/or confidential information intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.

### Attachment 3

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
v.	)	
	)	Civ. No. 04-11136-GAO
DIRECT MARKETING CONCEPTS, INC., et al.,	)	
	)	
Defendants.	)	

**SUPPLEMENTAL DECLARATION OF CHRISTINA E. TURNER  
PURSUANT TO 28 U.S.C. § 1746**

1. My name is Christina E. Turner. I am a citizen of the United States and over twenty-one years of age. I am employed by the Federal Trade Commission ("FTC") as a Paralegal Specialist in the Division of Advertising Practices of the Bureau of Consumer Protection. My business address is 600 Pennsylvania Ave., N.W., Room NJ-3212, Washington, D.C., 20580.

2. My duties include investigating possible violations of the Federal Trade Commission Act. I have been assigned to the Commission's litigation, *FTC v. Direct Marketing Concepts, Inc., et al.* I have personal knowledge of the facts stated herein. If called to testify, I could and would competently testify to the facts set forth below.

3. I have previously submitted two Declarations in this case in support of the Commission's motion for a Temporary Restraining Order and one Declaration in support of the Commission's motion for a modification of the June 23, 2004 Preliminary Injunction as to Defendants Direct Marketing Concepts, Inc., ITV Direct, Inc., and Donald Barrett.



### **INFOMERCIAL MONITORING SERVICE REPORTS**

4. As I stated in my previous declaration in support of the Commission's motion for a modification of the preliminary injunction, the Infomercial Monitoring Service ("IMS") monitors 39 national cable channels twenty-four hours a day, seven days a week, and compiles data on the paid programming aired. IMS issues a report each month which, among other things, identifies new infomercials that IMS has detected and reports the 100 most frequently aired infomercials for that month.

5. According to IMS's monthly reports of the 100 most frequently aired infomercials, the Sea Vegg infomercial was ranked number 14 in May 2005 and the Renuva infomercial was ranked 75. True and correct copies of excerpts from the May 2005 IMS report showing this rankings are included in Attachment 1 to this Declaration.

6. This is the highest ranking I have seen reported for the Sea Vegg infomercial. As I stated in my most recent declaration, Sea Vegg was ranked number 67 in February 2005, number 28 in March 2005, and number 26 in April 2005.

### **SEA VEGG**

7. Using the transcript of the Sea Vegg infomercial that was included as Attachment 2 to my May 24, 2005 Declaration, I manually counted the number of times the words, "cancer," "arthritis," "diabetes," and "fibromyalgia" appeared. I then verified my tallies using the using Wordperfect's electronic word finding function. My results were as follows:

Cancer -- 18 times

Arthritis -- 4 times

Diabetes -- 7 times

Fibromyalgia -- 4 times

In addition, the word "disease" was used 30 times, 11 of which were as part of the phrase "degenerative disease."

8. Attachment 2 to this Declaration is a true and correct copy of the label from a bottle of Sea Vegg.

9. Prior to receiving the Defendants' Opposition to the Commission's motion, I was not aware of the existence of the revised Sea Vegg infomercial referred to by Mr. Sciucco. Nor do I believe that any of the Commission staff attorneys working on this case were aware of it, because the standard procedure would have been for that attorney to have directed me to obtain a copy of that infomercial.

10. On June 23, 2005, I received a copy of a Sea Vegg infomercial videotape from a sales manager at a San Francisco-based television station, KRON4. Based on my conversation with this individual, it is my understanding that the copy of the infomercial that I received was made from a master tape of the infomercial that aired as recently as yesterday, June 22, 2005. Shortly after receiving the tape on June 23rd, I reviewed the tape and compared it to the transcript of the version of the Sea Vegg infomercial that was attached to the Commission's motion for a modification of the June 23, 2004 Preliminary Injunction. In watching the new tape I did not observe any differences in dialogue between Donald Barrett and Scott Kennedy from the transcript of the original version of the infomercial. A true and correct copy of the videotape of the Sea Vegg infomercial that I received on June 23, 2005 is attached this Declaration as Attachment 3.

#### **ADDITIONAL DOCUMENTS AND MATERIALS**

11. Attachment 4 to this Declaration contains a true and correct copy of a June 1, 2005 press release issued by the Electronic Retailing Self-Regulation Program ("ERSP")

announcing ERSP's referral of the Renuva Anti-Aging System to the FTC for non-compliance with ERSP's previous decision.

12. Attachment 5 to this Declaration contains a true and correct copy of a June 3, 2005 letter and attachment from Peter C. Marinello of ERSP to Michael Sciucco of ITV Direct, Inc., which was provided to the FTC on June 21, 2005 from a confidential source other than ERSP.

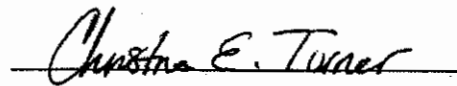
13. Attachment 6 to this Declaration contains a true and correct copy of ERSP's decision on the Sea Vegg infomercial.

#### **UNDERCOVER CALLS MADE TO DEFENDANTS**

14. Since the June 23, 2004 entry of the Preliminary Injunction, I have made a total of nine (9) taped, undercover calls to ITV to place product orders. I did make untaped calls to cancel autoships and inquire when I would be getting refunds for returned product.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the statements made in this Declaration are true and correct.

Executed on June 23, 2005



Christina E. Turner

## **Attachment 4**



# NATIONAL CABLE RANKING - FREQUENCY

**IMS MONTHLY TOP 100 for August 2005**

Based solely on frequency of programs aired on networks monitored.

Rank	Title	Rank	Title	Rank	Title	Rank	Title
1	Natural Cures	26	Auctions For Income	51	Attacking Anxiety	76	Course And Cure For Diabetes
2	bareMinerals	27	Cash Flow Business	52	Tread Climber	77	Treasure Hunter
3	Magie Bullet	28	Ronco Six Stor	53	Murod	78	Coin Country
4	Tempur-Pedic	29	Lazer Storm	54	Billy's Bootcamp	79	Light Relief
5	Country Superstars	30	Girls gone Wild	55	Rock Bottom Stois	80	The Firm
6	Body Makeover	31	Fine Art Showcase	56	Cardio Cruiser	81	Vonage
7	Bowflex	32	TaiVito	57	Slim 'n Lift	82	Hagge Ministry
8	Carleton Sheets	33	Golden Oil	58	FlavorWave Oven	83	Q-Grill
9	Survival Sweeper	34	Shear Cover	59	Power 90	84	Ronco Showtime
10	Home & Garden Secrets	35	Conquer HA	60	Rug Doctor	85	Hair Club
11	Soo Vegg	36	Bosley	61	Wagner Control Spray	86	Selleck's Sedition
12	WolFit Orthotics	37	Feed The Children	62	Smart Technique	87	Video Professor
13	Total Gym	38	Oreck Air	63	Klear Action	88	Roller
14	Ionic White	39	FoodServer Advanced	64	Firmalift	89	eyeQ
15	Proactiv	40	Cutlery Corner	65	Urban Rebounding	90	Easy Shaper
16	Little Giant Ladder	41	Ab Scissor	66	Specialty Merch. Corp.	91	American Legacy Guitar
17	Core Secrets	42	White Light	67	Progressive Profits	92	Think Different
18	Oreck XL	43	Free & Clear	68	Slim in 6	93	Base 321
19	Cable Shopping Network	44	Youthful Essence	69	MDR	94	Nutrisystem
20	Jeff Paul System	45	Ionic Breeze	70	Soul 70s	95	AmeriQuest
21	Sleep Number	46	Skin Recovery	71	Greatest Vitamin	96	Project You
22	Dual Action Cleanse	47	TrueCeramicPro	72	Principal Secret	97	Slanderone Flex
23	Face Disc	48	LIFE	73	Interview with Dr. Day	98	DREMEI
24	MoxiGlide	49	Voluptas	74	Land Rider	99	Wild Party Girls
25	Classic Soul Ballads	50	Makeup Optional	75	Extenze	100	Legends



Informational Monitoring Service, Inc.  
 Satellite 2 - 810-812 Parkway Boulevard  
 Broomall, Pennsylvania 19008 - USA  
 610-328-6902 - fax 610-328-6791  
 email reports@imstv.com • imstv.com

© 2005 Informational Monitoring Service, Inc. All rights reserved. No part of this publication may be reproduced or transmitted in any form electronic or mechanical, including photocopy, or any information storage and retrieval system without permission in writing from IMS. IMS is not responsible for any loss due to errors or omissions in information provided, or for any loss of service due to technical or other difficulties. Any publication, or public display, or other use, without the prior written permission of IMS is prohibited.

**CERTIFICATE OF SERVICE**

My name is Shira Modell and I am an attorney with Federal Trade Commission. On September 27, 2005, copies of Plaintiff Federal Trade Commission's Opposition to DMC Defendants' Motion for Continuance and for Sanctions, and the attached Declaration of Edward Glennon, were served via Federal Express as follows:

Becky V. Christensen  
O'Connor Christensen & McLaughlin LLP  
1920 Main St., Suite 150  
Irvine, CA 92614

(for Michael Howell, Greg Geremesz, Health Solutions, LLC, Alejandro Guerrero and Health Solutions, Inc)

Dustin F. Hecker  
Posternak Blankstein & Lund LLP  
The Prudential Tower  
800 Boylston Street  
Boston, Massachusetts 02199-8004

(for Michael Howell, Greg Geremesz, Health Solutions, LLC, Alejandro Guerrero and Health Solutions, Inc)

Peter Brooks  
Seyfarth Shaw, LLP  
World Trade Center East  
Two Seaport Lane, Suite 300  
Boston, MA 02210

(for Direct Marketing Concepts, Inc., ITV Direct, Inc., Donald W. Barrett, and Robert Maihos )

Joseph Ryan  
Lyne, Woodworth & Evarts LLP  
600 Atlantic Avenue  
Boston, MA 02210

(for Triad ML Marketing, Inc., King Media, Inc., Allen Stern, Lisa Stern, and Steven Ritchey)

Sage International, Inc.  
Attention: Molly Wheeler  
1135 Terminal Way, Suite 209  
Reno, NV 89502

(for BP International, Inc.)

I declare under penalty of perjury that the foregoing is true and correct. Executed this August 27, 2005 in Washington, D.C.

Shira D. Modell  
Shira D. Modell